

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Certain Cold-Rolled
Carbon Steel Flat Products From South Africa

Summary

We have analyzed the case and rebuttal briefs of interested parties in the investigation of sales at less than fair value of Certain Cold-Rolled Carbon Steel Flat Products From South Africa. As a result of our analysis, we have made changes in the margin calculations for the final determination. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments and rebuttal comments by parties:

1. CEP Offset
2. Total Adverse Facts Available
3. Product Characteristics
4. Multiple Costs
5. Missing Costs
6. Inaccurate U.S. Sales Quantities
7. Missing Home-Market Sales
8. Inclusion of Non-Subject Merchandise in the Home-Market Sales File
9. Inaccurate Weight-Conversion Factors and Partial Adverse Facts Available

Background

On May 9, 2002, the Department published its preliminary determination in the above-

captioned antidumping duty investigation. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Negative Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From South Africa, 67 FR 31243 (May 9, 2002) (Preliminary Determination). See also Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela, 66 FR 54198 (October 26, 2001) (Initiation Notice).

We gave interested parties an opportunity to comment on the Preliminary Determination. On July 19, 2002, the petitioners¹ submitted their case brief. Iscor Limited (Iscor) and its affiliate, MacSteel International USA Corp (MIUSA) (collectively Iscor), the sole respondent in this investigation, also submitted its case brief on July 19, 2002. The petitioners and Iscor submitted their rebuttal briefs on July 24, 2002. No parties requested a hearing.

Discussion of the Issues

1. CEP Offset

Comment 1: The respondent contends that the Department should make a constructed-export-price (CEP) offset adjustment to normal value to account for the difference in the levels

¹ The petitioners in the concurrent antidumping duty investigations are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. Weirton Steel Corporation is not a petitioner in the Netherlands case. Effective January 1, 2002, the party previously known as "United States Steel LLC" changed its name to "United States Steel Corporation."

of trade in the home and U.S. markets. In addition, Iscor contends that the Department should determine that its home-market sales are made at a higher level of trade than its U.S. CEP sales. Iscor states that the Department explained in its preliminary analysis memorandum that it denied Iscor's request for a CEP offset because it did not recognize any differences in the level of trade between Iscor's home-market and U.S. CEP level of trade. Iscor requests that the Department reconsider its preliminary determination on this issue in light of the facts verified by the Department during its verification of Iscor and its affiliated companies.

Ischor contends that, as indicated in its questionnaire responses and confirmed by the Department at verification, it performs substantially more selling functions in the home market than in the U.S. market whereas Macsteel International South Africa (MISA) provides all of the selling functions and support for export sales to the United States. Iscor states that in the home market, it sells directly to merchants and end-users and performs all of the selling functions associated with the sales within the home market. For example, Iscor explains, it processes orders, dispatches materials, collects market information, analyzes market trends, represents itself to end-users, and attends to customer complaints. Iscor indicates that, by contrast, in the U.S. market, it does not maintain a department to perform export-related functions and instead relies on MISA to perform all of the export-related functions. Iscor argues that MISA performs functions for the U.S. market that Iscor performs on its sales for the home market, such as marketing and promotion services. Iscor argues that the large disparity in the selling functions performed in the two markets by Iscor is clearly reflected by a comparison of the indirect selling expenses which the Department verified.

Ischor asserts that, because the level of trade in the home market is at a far more advanced

stage than the level of trade of U.S. CEP sales and there is only one level of trade in the home market which precludes a level-of-trade adjustment, the Department should grant a CEP offset to adjust normal value. Iscor cites 19 CFR 351.412 and argues that, in such cases, the regulations instruct the Department to grant a CEP offset (equal to the amount of the indirect selling expenses included in normal value up to the amount of indirect selling expenses deducted in determining CEP) to adjust normal value.

The petitioners argue that the Department should continue to deny the CEP offset. The petitioners contend that, in its preliminary determination, the Department denied the CEP offset because it found the level of trade in the home market to be similar to the CEP level of trade. The petitioners argue that there is nothing on the record that warrants a contrary conclusion. The petitioners argue that the record shows clearly that Iscor's home-market sales are not at a more advanced level of trade than its CEP sales. As a counter argument to the respondent's argument that the home-market and CEP sales are at different levels of trade because indirect selling expenses (ISEs) are higher for its home-market sales, the petitioner contends that this fact is irrelevant because levels of trade are determined by reference to selling activities and not selling expenses. The petitioners argue that the law does not intend for the Department to find different levels of trade based simply on a comparison of ISEs. Moreover, the petitioners contend, contrary to Iscor's assertion, the home-market ISEs are comparable to the U.S. market ISEs. As such, the petitioners contend that the Department should continue to deny the requested CEP-offset adjustment to normal value.

Department's Position: We evaluated all the information on the record and, because we continue to find the CEP level of trade to be similar to the home-market level of trade, we have

not made a CEP-offset adjustment.

Iscor reported one channel of distribution in the home market with two customer categories, merchants (which included distributors, processors and service centers) and end-users. Iscor's selling activities associated with all sales were similar (e.g., freight and delivery arrangements, order processing, inventory management, after-sales service, and quality assurance) and, based on our analysis of the selling activities, we determined that the reported single home-market channel of distribution constitutes one level of trade.

Iscor reported one channel of distribution in the U.S. market, represented by its CEP sales. After making deductions pursuant to section 772(d) of the Act, we found that the selling functions performed by Iscor and its affiliate, MISA, at the CEP level (e.g., freight and delivery arrangements, order processing, inventory management, after-sales service and quality assurance) were not sufficiently different from the selling functions performed by Iscor at the home-market level of trade (e.g., freight and delivery arrangements, order processing, inventory management, after-sales service, and quality assurance) to consider the home-market level of trade to be different and at a more advanced stage of distribution than the CEP level of trade.

During verification, we discussed separately with Iscor and MISA company officials the selling functions performed and the services offered in the home market and U.S. market. While it is true that Iscor itself does not perform any selling functions for export sales to the United States, its affiliate in South Africa, MISA, provided all the selling functions and support for export sales to the United States. See home-market sales verification report, dated June 24, 2002, at page 16. Because Iscor and MISA are affiliated, and MISA performed selling functions related to the sales under investigation, we consider them a single entity for purposes of this

analysis. As a single entity, we find the services and functions that it performed for sales in the home market and the United States to be similar. Therefore, we made no CEP-offset adjustment.

2. Total Adverse Facts Available

Comment 2: The petitioners argue that Iscor's responses are deficient and unreliable and that the Department should reject them completely. The petitioners contend that the responses are incomplete and have inaccuracies in several essential components which, individually and collectively, make it impossible to calculate a dumping margin. They assert that the Department should use, as total adverse facts available, the margin from the petition, as adjusted in the initiation checklist (i.e., 54.59 percent).

The petitioners argue that there are pervasive and significant problems with Iscor's responses. (Each of the specific problems alleged by the petitioners is addressed as a separate comment below.) The petitioners conclude by stating that, because there is no way to fix most of the deficiencies with partial facts-available remedies, the Department should reject Iscor's responses and use total adverse facts available.

The respondent asserts that the Department should find that it has acted to the best of its abilities and should neither apply total adverse facts available nor partial adverse facts available. Iscor asserts that the problems cited by the petitioners either do not exist, affect only a very minor portion of the data necessary to calculate a dumping margin, or can be remedied easily by using evidence on the record of this proceeding. Iscor contends that there is no justification for the application of total adverse facts available. Moreover, Iscor argues that partial adverse facts available is unwarranted in this investigation because it has cooperated fully with the Department to the best of its ability. In addition, Iscor explains, the Department conducted a detailed

verification of information submitted by both Iscor in South Africa and MIUSA in the United States. Iscor states that it is inevitable that, in an investigation of this scale and complexity, both Iscor and the Department found inadvertent errors before and during verification. Iscor states that it acknowledged such errors candidly and has endeavored to correct them. Moreover, just as inevitably, Iscor explains, it has not been able to provide all of the information requested by the Department in exactly the form specified by the Department. Iscor states that it has committed and devoted considerable time and resources to do the very best it could to provide the Department either with the information it requested or with reasonable approximations within the time allowed.

The respondent's response to the petitioners' specific allegations are included under each appropriate comment below. Iscor concludes that, for all the reasons discussed below, the Department should find that Iscor and MIUSA acted to the best of their abilities during this investigation and that there is no basis for the Department to apply total adverse facts available or partial adverse facts available for the final determination.

Department's Position: Section 776(a)(2) of the Act provides that, "if an interested party or any other person--(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." The statute requires that certain conditions be met before the

Department may resort to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by (the Department)" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met and the Department can use the information without undue difficulties, the statute requires it to do so.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316 (1994), at 870. Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." Antidumping Duties; Countervailing Duties; Final Rule, 62 FR

27296, 27340 (May 19, 1997). In addition, when selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

We conducted a detailed verification of information submitted by both Iscor in South Africa and MIUSA in the United States and for the most part found this information to be satisfactory. Although we found inadvertent errors before and during verification, Iscor acknowledged the errors and cooperated fully with us to correct them. We also find that Iscor has acted to the best of its ability with one exception, as described in our response to Comment 9, below. The Department does not find, therefore, that the use of total adverse facts available is warranted. Instead, the Department has applied partial facts available where necessary and used an adverse inference where appropriate under section 776(b) of the Act. Our position on specific comments are below.

3. Product Characteristics

Comment 3: The petitioners state that in Iscor's original response it classified home-market sales as not tension-leveled with a surface finish of "bright" but at verification an Iscor technical expert estimated that a great percentage of Iscor's sales are tension-leveled and have a surface finish of "matte". The petitioners allege that, to correct these errors, Iscor submitted a new data file with its proposed classifications for the leveling and surface-finish elements. The petitioners contend that Iscor's revisions do not identify the percentage of sales that are not tension-leveled and have a surface finish of "bright". The petitioners argue that, as a result, it is

not possible to match models accurately or to determine whether sales have been assigned appropriate costs.

Iscor argues that the Department should accept the good-faith estimate of its technical expert concerning tension-leveling and surface finish or, alternatively, exclude these characteristics from the model-matching methodology. Iscor explains that, as the Department's report on its home-market verification of Iscor indicates, neither tension-leveling or surface finish are characteristics reflected in Iscor's product-coding system nor are they captured in any of the firm's computerized databases. Iscor argues that it was not physically possible within the time constraints of the investigation to identify these characteristics for the thousands of transactions in Iscor's response. Moreover, Iscor argues that, because it retains production documents for only six months, even a manual search of production records would not have disclosed the required information.

Iscor contends that it cooperated with the Department to the best of its ability by making available during verification its most highly qualified technical expert who discussed a reasonable method to estimate these product characteristics.

Contrary to the petitioners' allegations, Iscor argues that it does not believe that its proposed solution affects significantly, if at all, the Department's ability to match models. Iscor asserts that both characteristics are far down the hierarchical list of product characteristics the Department developed so that matches will be determined primarily by such criteria as form and width rather than leveling or surface finish.

Iscor argues that, more importantly, because neither characteristic is part of the Iscor product code and because its manufacturing costs vary only by product code, the presence or

absence of either characteristic does not affect its cost of manufacturing. Iscor contends that the petitioners' claim that Iscor's proposal prevents an accurate determination of production costs is unfounded.

Iscore respectfully submits that, if the Department determines that it cannot accept Iscor's good-faith estimate of these product characteristics, the Department should exclude these characteristics from the model-matching methodology and match products using the remaining characteristics.

Department's Position: We have accepted Iscor's estimates of the leveling and surface-finish characteristics. We confirmed at verification that the information on tension-leveling and surface finish are not included in Iscor's internal product code and are not recorded in Iscor's computer system. Further, even if these characteristics were identified for all sales, we are satisfied that they would not affect Iscor's production costs for each model. As such, for this final determination, we have accepted the information Iscor reported for the leveling and surface-finish characteristics of its sales.

4. Multiple Costs

Comment 4: The petitioners assert that Iscor has assigned three different variable cost-of-manufacture figures (one for U.S. sales, one for home-market sales, and one for constructed-value information) for every model sold in the U.S. market. Similarly, the petitioners assert that Iscor has assigned two different total cost-of-manufacture figures for every model sold in the U.S. market. The petitioners assert that it is impossible to perform the Department's 20-percent comparability test, to calculate an accurate difference-in-merchandise (DIFMER) adjustment, or to determine the correct CEP-profit amount.

Iscor states that it has explained in many of its written responses and at verification that its cost system is based upon a product code that is used in all markets and that the cost for a single, unique product code is the same, regardless of the market in which the merchandise with that product code is sold. In using the Department's product characteristics to determine matching control numbers (CONNUM), however, Iscor explains that there were cases where several of Iscor's product codes were included in each CONNUM. Iscor refers to the explanation in its April 8, 2002, section D response that the costs reported for the same CONNUM in sections B, C and D of its responses could differ slightly because the costs for the home market and the U.S. market were based on a weighted-average of the costs for product codes in transactions for each market and the CV costs it reported were based on a weighted-average of the costs for product codes sold in both markets. Iscor states that it reported costs in this manner to ensure a verifiable link between the cost for an individual model and the cost for the constituent product codes as reflected in its accounting system.

Iscor argues that, contrary to the petitioners' claim that it is not possible to determine which costs are correct, all three are accurate. As such, Iscor contends that the record is complete and contains the data necessary for use in the Department's final calculation.

Department's Position: While we agree with the petitioners that Iscor has assigned different costs for U.S. sales, for home-market sales, and for CV purposes, we agree with Iscor that the record contains the data necessary for calculating an accurate margin for the final determination. Because the costs Iscor reported in its section D (CV) response were based on sales in both markets, for the Preliminary Determination, we used the costs reported for CV purposes to calculate DIFMER based on the variable cost differences, to perform the 20-percent

comparability test, and to determine the correct CEP-profit amount. This is consistent with the methodology we employ for both our DIFMER and profit calculations for all other cases.

5. Missing Costs

Comment 5: The petitioners state that, because Iscor did not report cost-of-production (COP) or CV data for eleven U.S. models, it selected surrogate costs using data it had reported for the most similar models. The petitioners contend that this is potentially distortive because the surrogate model may have a much higher cost than the actual model, thus resulting in a more favorable DIFMER adjustment than would otherwise be warranted.

Citing the Department's home-market verification report dated June 24, 2002, at page 18, Iscor states that it explained at verification that it was not able to calculate the CV for the models at issue because it was not able to link certain MIUSA invoices to Iscor sequence numbers which could then be linked to Iscor's cost system. Iscor explains that, at the Department's request, Iscor undertook to identify surrogate models, *i.e.*, models which, according to the Department's model-match methodology, closely matched the models for which Iscor could not calculate CV figures.

The respondent cites Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18448 (April 15, 1997), at Comment 1 and argues that, contrary to the petitioners' claim that the use of surrogates is unacceptable, the use of surrogate costs has been endorsed by the Department in many cases such as the one in this investigation.

Iscore argues that its approach to resolving this problem is reasonable and non-distortive and serves as further evidence of its attempts to cooperate to the best of its ability.

Department's Position: During the home-market sales verification we confirmed that

Iscor's internal product nomenclature does not conform precisely to the CONNUM identification applicable to this investigation. As a result of this difference, Iscor was not able to calculate the CV for the models at issue because it was not able to link certain MIUSA invoices to Iscor sequence numbers which could then be linked to Iscor's cost system for purposes of responding to our questionnaire. Instead, using the Department's matching criteria, Iscor identified models which closely matched the models for which it could not provide CV data and supplied CV data for the surrogate models. At verification, however, we asked Iscor to submit a detailed rationale for selecting the costs of certain similar models as surrogate values for the models missing CV data. Although Iscor did not provide us with such a detailed rationale, our review of the record indicates that Iscor acted to the best of its ability to select similar models and provide surrogate CV data. Nevertheless, we are unable to determine the impact of the difference in the physical characteristics between the similar model Iscor chose and the models for which we have no cost information. Therefore, pursuant to sections 776(a)(2) and 782(e) of the Act, as facts available we have not included the models for which we have no CV data in the margin calculation. Because Iscor acted to the best of its ability to provide the missing information, we did not make an adverse inference. For a more detailed analysis see the final determination analysis memorandum from analyst to file dated September 23, 2002.

6. Inaccurate U.S. Sales Quantities

Comment 6: The petitioners state that at verification the Department discovered that, for some of Iscor's U.S. sales, the invoice quantity was inadvertently and erroneously duplicated for each item on the invoice. The petitioners state that at verification MIUSA presented a 28-page list containing the corrected quantity allocations. The petitioners contend that these corrections

are not reflected in the U.S. data file submitted by Iscor on July 12, 2002.

The respondent agrees with the petitioners and explains that the programming it used to link MIUSA's data to Iscor's data was inadvertently not corrected in the revised data files submitted on July 12, 2002. The respondent explains that the MIUSA invoices at issue and the correctly allocated quantities are on the record in the form of a U.S. sales verification exhibit. The respondent suggests several methods by which the Department can correct the data and offers to submit a U.S. sales data file identical to the one submitted on July 12, 2002, except that the file would contain the correct allocation of quantities among transactions pertaining to a single MIUSA invoice. Finally Iscor argues that this mistake is not grounds for applying partial facts available as alleged by the petitioners.

Department's Position: On August 13, 2002, we asked the respondent to submit a revised U.S. sales data file which would contain the correct allocation of quantities among transactions. Also in our August 13, 2002, letter, we asked the respondent to explain certain inconsistencies between the paper copy on record (U.S. sales verification exhibit 6) and the electronic version of the duplicate invoices submitted with the respondent's rebuttal comments. On August 16, 2002, in response to our request, the respondent submitted a revised sales file, an explanation, and supporting documentation with respect to the inconsistencies. We have used the corrected data for this final determination.

7. Missing Home-Market Sales

Comment 7: The petitioners explain that, at verification, the Department discovered certain home-market transactions that Iscor had cancelled and excluded from its home-market sales file incorrectly. The petitioners contend that in Iscor's July 12, 2002, submission it reported

only some of the incorrectly cancelled sales for the relevant invoices and that some of the incorrectly cancelled sales have not been reported.

The respondent agrees with the petitioners' assertion that some of the incorrectly cancelled home-market sales were not reported in the revised data files submitted on July 12, 2002. The respondent asserts, however, that the home-market transactions at issue were properly cancelled as a result of the allocation of post-period of investigation (POI) credits, in accordance with the Department's instructions.

Department's Position: The home-market transactions at issue were properly cancelled as a result of the allocation of post-POI credits. During the home-market verification Iscor stated that while preparing for verification Iscor realized that it had not taken into account post-POI quantity adjustments. We asked Iscor to revise its sales list to reflect the accurate billing adjustments with respect to the invoices within the POI. See the home-market sales verification report at page 11 and 12. We verified the accuracy of the revised sales list by comparing it to the electronic Excel database (which is on the record of this investigation) which includes all transactions, both invoices and credit notes, relating to each order. Therefore, we are satisfied with this aspect of Iscor's database.

8. Inclusion of Non-Subject Merchandise in the Home-Market Sales File

Comment 8: The petitioners explain that at verification the Department discovered that one of its pre-selected sales traces was a sale of non-subject sleeves. The petitioners quote the Department's verification report dated June 24, 2002, at page 11, where the Department states that it conducted a test to ensure that other invoices of similar non-subject merchandise were not included mistakenly in the sales list. The petitioners contend that, because the Department's test

revealed that three other reported home-market sales were found to be of non-subject merchandise, the Department's test provides no assurance that other non-subject products were not included in the home-market sales file. The petitioners argue that, because the Department found so many sales of non-subject products when conducting its limited spot checks, it calls into question the reliability of the entire response.

The respondent asserts that the petitioners' statement that the Department's test provides no assurance that other non-subject products were not included in the home-market sales file is accurate but misleading. The respondent argues that if the only test performed by the Department during verification is the one to which the petitioners refer, the Department would have no assurance that other non-subject merchandise had been excluded properly. Iscor contends that the Department conducted a detailed review of Iscor's system of production, sales, accounting, and department codes which Iscor used to identify the merchandise under investigation and to segregate sales of non-subject merchandise from sales of subject merchandise. Iscor argues that the Department conducted an exhaustive review of its sales accounting and conducted many tests to confirm that the reported quantity and value of sales were accurate and did not contain any non-subject merchandise such as hot-rolled coil or plate as alleged by the petitioners.

The respondent cites the Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Luxembourg, 67 FR 35488 (May 20, 2002), at Comment 1, and argues that, in a similar situation, the Department declined to apply adverse facts available because three of the eight selected sales were of non-subject merchandise. In that case, Iscor argues, the Department reasoned that, although three of the eight pre-selected sales were included

in the data base incorrectly, they were not the only sales examined at verification, additional sales selected during verification were examined, and many more sales invoices were examined during the verification of quantity and value. As such, Iscor contends, the Department's test to isolate sales of sleeves when considered together with the entirety of the Department's verification procedures more than suffices to ensure that sales of non-subject merchandise have not been reported.

Department's Position: We believe that our verification procedures more than suffice to ensure that Iscor excluded sales of non-subject merchandise properly. If the only test we conducted was the one to which the petitioners refer, we would indeed not be able to conclude that Iscor had excluded non-subject merchandise properly. While verifying quantity and value, however, we examined numerous sales invoices and conducted several tests to determine the validity of the sales reported. We found that non-subject merchandise had been excluded properly. See the home-market sales verification report at pages 9 and 10. As such, we do not consider the errors at issue to be so pervasive as to undermine the integrity of the overall response.

9. Inaccurate Weight-Conversion Factors and Partial Adverse Facts Available

Comment 9: In support of its argument that the Department should apply total facts available (Comment 2 above) the petitioners also allege that Iscor's factors for converting from theoretical to actual weights are inaccurate and that it is impossible to compare U.S. prices (which are stated in dollars per theoretical metric ton) to home-market prices (which are stated in rand per actual metric ton).

In addition, the petitioners argue, because the respondent did not act to the best of its

ability to provide accurate weight-conversion data, the Department should apply partial adverse facts available. The petitioners state that, in response to the Department's request for an explanation as to why the calculated weight-conversion factors ranged in the manner that they did, the respondent indicated that some of the actual weights were reported incorrectly due to data-entry errors. The petitioners assert that the respondent did not make an attempt in its response to the Department's supplemental questionnaire to identify which sales had incorrect actual weights or to correct them. Further, the petitioners argue, at the beginning of verification of U.S. sales, the respondent did not submit any corrections to the weight-conversion data. Moreover, the petitioners assert that, when conducting sales traces, the Department discovered a discrepancy in Iscor's reported data. The petitioners state further that, in Iscor's July 12, 2002, submission, which included revised data, the respondent claimed that it adjusted the reported weight-conversion factors to reflect certain corrections the Department found during verification. The petitioners argue that the respondent has not provided any materials to support these adjustments and has not provided worksheets to show how it calculated the adjustments. The petitioners contend that the Department has not verified the weight-conversion factors and that the respondent did not correct the specific weight-conversion error the Department found at verification in its July 12, 2002, submission. The petitioners assert that the respondent's July 12, 2002, adjustments have not remedied the disparities caused by its data-entry errors.

Additionally, the petitioners argue that the adjusted weight-conversion factors were not provided within the established deadlines and cannot be verified as provided in section 782(i) of the Act. The petitioners state that the Department allowed the respondent adequate time to submit revised data so that the data would reflect certain corrections already identified at the

beginning of verification and subsequently verified by the Department. The petitioners assert that Iscor did not disclose its adjusted weight-conversion factors at the beginning of verification and that the Department did not mention them in its verification report. The petitioners argue that, pursuant to 19 CFR 351.301(b)(1), the July 12, 2002, submission constitutes an untimely submission of new factual information.

Further, the petitioners argue that the Department cannot use the unadjusted weight-conversion factors the respondent reported originally because the factors are based on actual-weight data which even the respondent has acknowledged are inaccurate. Accordingly, the petitioners argue that because the information necessary to convert theoretical to actual weights accurately is not on the record, the Department must resort to facts available.

The petitioners state that pursuant to section 776 of the Act, where a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an adverse inference in selecting among facts available. The petitioners argue that, because the respondent has never claimed that it would not have been feasible to check the original source documents to determine correct actual weights and because the respondent made no attempt, electronically or manually, to provide accurate weight-conversion factors, it did not act to the best of its ability.

The petitioners cite Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329 (May 6, 1999) (Hot-Rolled Steel), where Nippon did not provide weight-conversion factors in its questionnaire responses because it thought it did not maintain such information and subsequently indicated that, while preparing for verification, it found that the information was available and submitted the data as a minor correction prior to verification. The

petitioners argue that the Department rejected the information as untimely and applied adverse facts available. The petitioners allege that Iscor was aware that its weight-conversion factors were in need of correction well before verification but that it made no attempt to do so until two months after verification. The petitioners suggest that, as adverse facts available, the Department should use the lowest weight-conversion factor Iscor reported for any transaction and apply it to all U.S. sales.

The respondent explains that MIUSA has consistently reported in its responses the weight-conversion factor based on figures for actual and theoretical weights that are exactly as reflected in its computerized accounting system. Iscor acknowledges that at verification the Department found errors in data attributable to original data-entry mistakes and to Iscor's flawed computer programming which did not always convert the quantity for returned sales from actual to theoretical weight. Consequently, Iscor explains, MIUSA provided a weighted-average of all weight-conversion factors for the POI and suggested that the Department use the weighted-average figure in lieu of individual weight-conversion factors.

Iscor argues that, contrary to the petitioners' assertions, it acted to the best of its ability to cooperate with the Department. The respondent explains that MIUSA is a small company and, even assuming that the original records existed dating back as much as five years, it was not possible for MIUSA to check the source documents manually to determine whether and, if so, what type of data-entry error occurred. The respondent alleges that, for the same reasons, it was not possible for MIUSA to review all entries of physical returns affecting invoices during the POI to confirm that those returns had been recorded accurately.

The respondent asserts that MIUSA's weighted-average conversion factor has been

verified and is consistent with industry norms. Moreover, Iscor contends, the petitioners have not questioned either the veracity of the views expressed by MIUSA's industry expert during verification or the accuracy of the weighted-average conversion factor calculated by MIUSA. Iscor argues that the weighted-average conversion factor is, in fact, a reasonable and non-distortive surrogate and should be applied by the Department for the final determination if it determines that the factors reported by MIUSA should not be used.

The respondent argues that the three factors cited by the Department in support of its application of partial adverse facts available in Hot-Rolled Steel do not apply in this case. The respondent states that the Department explained in Hot-Rolled Steel that Nippon Steel had significant experience with antidumping proceedings, it had provided incorrect responses to repeated requests for information because it did not make the requisite internal inquiries, and the weight-conversion factor was within Nippon Steel's control. Unlike Nippon Steel, however, Iscor asserts that MIUSA has not had experience with antidumping proceedings, did not provide misleading responses but candidly admitted that there might be input errors, and did not have readily available documents to check the accuracy of the weight conversion data in its accounting system. The respondent argues, therefore, that, even if the existence of these facts were sufficient to justify the application of partial adverse facts available to Nippon Steel, they are completely absent with respect to MIUSA.

Department's Position: In our response to Comment 2, we discussed the application of facts available in detail. In this particular instance we find that, pursuant to section 776(b) of the Act, because Iscor did not act to the best of its ability, partial adverse facts available is warranted.

We find that Iscor's calculated weight-conversion factors are inaccurate in certain cases.

Although we examined the weighted-average weight-conversion factor MIUSA calculated for the POI and found it to be consistent with industry norms, we recognize that the weighted-average weight-conversion factor includes transaction-specific weight-conversion factors which are based on, in certain cases, inaccurate actual-weight data. Moreover, we find that Iscor did not act to the best of its ability to provide accurate information in this field. In Iscor's July 12, 2002, submission, it states that MIUSA adjusted the weight-conversion factor to reflect certain corrections found during verification. We have examined the revised database and find, however, that Iscor did not correct the inaccurate weight-conversion factor identified at verification.

Furthermore, although we allowed Iscor adequate time to make such corrections, there is no evidence on the record indicating that Iscor made any of the corrections in question. Moreover, there is nothing on the record to indicate that MIUSA attempted to examine original documents to determine whether the actual metric tons recorded in its system were accurate. We raised the issue of weight-conversion factors in our supplemental questionnaire dated March 20, 2002, in the U.S. sales verification outline dated May 2, 2002, and in a second supplemental questionnaire dated May 5, 2002. Iscor was fully aware that the reported weight-conversion factors were a concern to the Department. Prior to the preliminary determination, before and during verification, and after verification, Iscor had enough time to examine original documents to determine the accuracy of the actual weights. It did not do so. Iscor's rebuttal brief at page 12 confirms that it did not undertake the effort to check source documents. As demonstrated at verification, it was possible to determine the actual weight by examining source documentation. See U.S. sales verification report, dated May 23, 2002, at page 8. Consequently, in accordance

with section 776(b) of the Act, we find that Iscor did not act to the best of its ability and that application of partial adverse facts available is warranted.

We agree with the respondent that the facts in Hot-Rolled Steel are not applicable in this case but, nonetheless, we find that Iscor did not act to the best of its ability to provide accurate weight-conversion factors. As such, as partial adverse facts available, we have used the lowest weight-conversion factor that we verified as accurate and applied it to all sales that have a reported weight-conversion factor greater than this number.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

Agree _____ Disagree _____

Faryar Shirzad
Assistant Secretary
for Import Administration

Date